

Chapter L Mediation of Complaints Alleging Discrimination On The Basis Of Disability By A Non-State Agency¹

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I. STATUTORY AUTHORITY

RI GL 42-51-6(d) Governor’s Commission on Disabilities – Duties², RI GL 42-51-6.2 Committees and mediation teams³ and RI GL 42-51-9(4)(ii) Definitions⁴

II. POLICY

A. The Governor’s Commission on Disabilities provides a mediation service to assist parties who voluntarily chose to utilize that service to resolve allegations of discrimination on the basis of disability. The mediators are volunteers from the business community, disability community and non-profit sector. Mediation Teams are used to ensure impartiality, with each party given the right to exclude potential mediators, which are not acceptable. At any point during mediation either party may withdraw.

B. All memoranda and other work product, including files, reports, interviews, case summaries and notes, prepared by a mediator shall be confidential and not subject to disclosure in any subsequent judicial or administrative proceeding involving any of the parties in mediation which the materials are generated; nor shall a mediator be compelled to disclose in any subsequent judicial or administrative proceeding any communication made to him or her in the course of, or relating to the subject matter of, any mediation by a participant in the mediation process.

C. A more formal system for resolving disability discrimination complaints against state agencies has also been established. See Commission regulation Chapter D.

III. DEFINITIONS

A. “The Commission” shall mean the [Governor’s Commission on Disabilities](#)⁵.

B. “Complainant” means the individual or organization that has filed the complaint on GCD Forms D 1 (Employment), D 2 (Government Services), D 3 (Public Accommodations), or D 4 (Housing and/or Credit).

C. “Non-state agency” means any public and private agencies, businesses, and citizens other than any department, division, agency, commission, board, office, bureau, council, or authority, either

branch of the Rhode Island general assembly or any agency or any committee thereof, or any other agency that is in any branch of Rhode Island state government and which exercises governmental functions.

D. "Respondent" means the entity(ies) the complainant named on GCD forms D 1 (Employment), D 2 (Government Services), D 3 (Public Accommodations), or D 4 (Housing and/or Credit) as responsible for the alleged discrimination on the basis of disability.

E. "Commissioner" shall mean a member of the Governor's Commission on Disabilities appointed by the Governor, pursuant to RIGL 42-51-2.

F. "Mediation Team" shall mean the 2 person teams created by the Commission, pursuant to RIGL 42-51-6.2 to attempt by informal methods of conference, persuasion, and conciliation, to induce compliance with matters within the jurisdiction of the commission.

IV. FILING COMPLAINTS

A. A formal written (or audio taped) complaint on a Disability Rights Complaint and Mediation Request GCD Form D 1 (Employment), D 2 (Government Services), D 3 (Public Accommodations), or D 4 (Housing and/or Credit) must be filed with the Governor's Commission on Disabilities.

1. Describing the nature of the discriminatory act(s) and the date(s) of occurrence;
2. Identifying the non-state agency and if possible employees who instigated the discriminatory act(s) and information about the act(s); and
3. Recommend possible resolution(s).

B. Within two (2) business days, the Commission's staff will:

1. Determine the deadline for filing a formal complaint/suit and advise the complainant of the federal & state enforcement agencies' deadline(s), and the time it could take to mediate the complaint;
2. Inform respondent of the complaint and the willingness of the complainant to attempt mediation, invite the respondent to enter into mediation; and
3. Mail all parties the Mediator Selection GCD Form D 5, requesting the parties identify which potential mediators listed are unacceptable, and return the form within twenty-five (25) business days.

C. When the complainant(s) and respondent(s) involved in a disability discrimination complaint pending before another regulatory body voluntarily agree to utilize the Commission's mediation service, the Commission shall mail all parties the Mediator Selection Form, requesting the parties identify which potential mediators listed are unacceptable, and return the form within twenty-five (25) business days.

V. *MEDIATION OR DISMISSAL*

A. Upon receipt of the Mediator Selection Form from the complainant and respondent, the Commission will appoint two (2) volunteer (trained) mediators, one (1) from the business community and one (1) from the disability community who are acceptable to all parties involved. In the event that there are not two mediators acceptable to all the parties, the Commission will select the two (2) least objectionable mediators.

B. If one or more of the parties declines mediation or has not returned the Mediator Selection Form within twenty-five (25) business days of its mailing, then the Commission shall close the complaint and so advise all the parties.

C. The mediation team shall meet with all parties, either jointly or separately, in an effort to promptly and equitably resolve the complaint. If the mediators are unable to resolve the complaint, within twenty-five (25) business days following their appointment, the mediation team shall file a Mediation Status GCD Form D 6 on their efforts with the Commission. All the parties may extend this (25-day) deadline by agreeing to additional mediation sessions (initialed by all parties).

D. If successful, all parties will execute in duplicate an agreement stipulating the actions agreed to by the parties, that the mediators shall witness.

1. A copy of the agreement shall not be submitted to the Commission, only the final Mediation Status Form indicating the type of resolution (initialed by all parties) shall be submitted to the Commission.

2. In mediations of complaints initially filed with another regulatory body, that other regulatory body might require a copy of both the final Mediation Status Form and the agreement. The Commission will assist the parties transmit any required documentation to other regulatory bodies.

E. All mediation shall be conducted in accordance with RI GL 9-19-44 ⁶.

VI. *FORMS*

The Commission's staff shall prepare and revise any forms, as necessary.

VII. *ENDNOTES*

These endnotes are the text of several general laws and are provided for clarification and are not part of the regulation. They are subject to revision, as amended by the General Assembly.

¹ History: Advertised October 21, 1999 Public Hearing November 22, 1999 Amendment adopted November 22, 1999 Effective December 27, 1999 Technical Amendments Adopted on September 13, 2003

² RIGL 42-51-6(4) Governor's Commission on Disabilities – Duties. –

(4) Providing technical assistance to public and private agencies, businesses, and citizens in complying with federal and state laws protecting the rights of individuals with disabilities.

³ RIGL 42-51-6.2. Governor's Commission on Disabilities - Committees and mediation teams. –

(1) The commission is authorized to create advisory committees and mediation teams to perform tasks within the jurisdiction of the commission.

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- (2) The commission may itself, or it may empower these committees and mediation teams to:
- (i) Study the concerns of people with disabilities in reaching the maximum in independent living and human development and exercising all of the rights and responsibilities accorded to citizens of this state;
 - (ii) Arouse community interest in the concerns of people with disabilities;
 - (iii) Foster through community effort or otherwise good will among the groups and elements of the population of the state towards people with disabilities; and
 - (iv) Attempt by informal methods of conference, persuasion, and conciliation, to induce compliance with matters within the jurisdiction of the commission.
- (3) The committees and teams may make recommendations to the commission for the development of policies and procedures in general.
- (4) Advisory committees and mediation teams created by the commission shall be composed of representative citizens serving without pay, but with reimbursement for actual and necessary traveling expenses.
- (5) Three (3) members of a committee constitutes a quorum for the purpose of conducting the business of that committee.

⁴ RIGL 42-51-9 Governor's Commission on Disabilities – Definitions

- (2) "Federal and state laws protecting the rights of individuals with disabilities" means, but is not limited to, the Americans with Disabilities Act of 1990, 42 USC § 12101 et seq.; title V of the Rehabilitation Act of 1973, 29 USC § 794; R.I. Const., art. I, § 2; the provisions of chapter 87 of title 42 and §§ 23-6-22, 37-8-15, 37-8-15.1 and 42-46-13.
- (5) "Providing technical assistance to public and private agencies, businesses, and citizens on complying with federal and state laws protecting the rights of individuals with disabilities" means information dissemination and training designed to encourage the voluntary compliance with laws protecting the rights of individuals with disabilities; conducting disability accessibility surveys and providing advice on how to overcome any barriers to accessibility; and a mediation service to assist parties who voluntarily chose to utilize that service to resolve allegations of discrimination on the basis of disability.

⁵ Governor's Commission on Disabilities

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⁶ RIGL 9-19-44 Mediator Confidentiality In Mediation Proceedings

- “(a) All memoranda and other work product, including files, reports, interviews, case summaries and notes, prepared by a mediator shall be confidential and not subject to disclosure in any subsequent judicial or administrative proceeding involving any of the parties to any mediation in which the materials are generated; nor shall a mediator be compelled to disclose in any subsequent judicial or administrative proceeding any communication made to him or her in the course of, or relating to the subject matter of, any mediation by a participant in the mediation process. For the purposes of this section, “mediation” shall mean a process in which an impartial third party who is a qualified mediator, who lacks authority to impose a solution, helps participants reach their own agreement for resolving a dispute, whether or not a judicial action has been filed; and a “mediator” shall mean an impartial person who enters into a written agreement with the parties to assist the in resolving their dispute and who has completed at least thirty (30) hours of training in mediation, or has two (2) years of professional experience as a mediator, or has been appointed to mediate by a judicial or governmental body.
- (b) This section shall not be applicable to any and all collective bargaining mediation, including but not limited to collective bargaining mediation conducted pursuant to chapters 9.1 - 9.5 and 10 of title 28 and chapter 11 of title 36.